



**CITY OF DURHAM
PARISH COUNCIL**

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Dear Ms Morina,

DM/21/04212/FPA | Change of use from dwelling (use class C3) to house in multiple occupation (use class C4). | 1 Diamond Terrace Durham DH1 5SX

The City of Durham Parish Council Planning Committee writes to object to this application.

Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission to be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) operates under a presumption in favour of sustainable development. It states that development proposals, which accord with the development plan, should be approved without delay. The adopted Development Plan where the site is located comprises the planning policies of the County Durham Plan (CDP) and the Durham City Neighbourhood Plan (DCNP).

Material considerations include: the National Planning Policy Framework (NPPF updated July 2021) and the National Planning Practice Guidance (NPPG).

Change of use to C4

The CDP was formally adopted in October 2020 and aims to accommodate, rather than constrain, the growth of the University, but to manage development such that it is carried out in a sustainable manner in terms of design, layout and location. This is consistent with national policy and guidance which state that plans should help create the conditions in which businesses can invest, expand and adapt, and make provision for sufficient student accommodation.

However, the significant growth in student numbers in the last twenty years has resulted in an extremely high number of former family homes being converted to houses in multiple occupation in many parts of the City.

The Local Planning Authority has previously sought to manage such development through the removal of permitted development rights in much of the city (through the introduction of Article 4 Directions) and the use of an interim policy, published in 2016 which aimed to prevent further houses in multiple occupation in areas where concentrations are high. In recent years, there have been a number of Purpose-Built Student Accommodation (PBSA) developments which have taken some pressure off the mainstream housing stock.

Nevertheless, this high proportion of students, along with the limited size of the city and its particular physical and historic character, mean that there are significant planning issues that need to be addressed. In response, the adopted CDP Policy 16 sets out a comprehensive approach for considering all forms of university-related development, including student accommodation proposals.

Because this proposal involves the change of use from a dwellinghouse (use class C3) to a house in multiple occupation (use class C4), it must be assessed under part 3 of Policy 16 of the County Durham Plan (CDP). This part of the policy seeks to promote, create and preserve inclusive, mixed and balanced communities and to protect residential amenity. It makes clear that the creation of new Houses in Multiple Occupation (both Use Class C4 and sui generis) will not be permitted if...including the proposed development, more than 10% of the total number of residential units within 100 metres of the application site are exempt from council tax charges (Class N Student Exemption).

In his Final Report on the County Durham Plan, the Inspector concluded that: *"Policy 16 provides a sound basis for considering university related development and would be effective in ensuring that such developments are carried out in an acceptable way over the coming years"*.

Policy 16 accords with both Paragraph 91 of the NPPF, which also seeks to achieve healthy, inclusive and safe places which promote social interaction and community cohesion, and with NPPF Paragraph 127 which also seeks to ensure that development will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development, thereby creating places that are safe, inclusive and accessible and which promote health and wellbeing, with a high standard of amenity for existing and future users.

Paragraph 5.155 of the supporting text of CDP Policy 16 states that the Council's approach is to maintain and create sustainable, inclusive and mixed communities in Durham City and acknowledges that residents have expressed concerns that concentrations of student accommodation in HMOs amongst the general housing stock has a negative impact upon residential amenity and changes the overall character of an area. In this application, within a 100m radius of, and including 1 Diamond Terrace, 45.0% of the properties are Class N exempt student properties as defined by their Council Tax records: there are 20 properties within 100m of the application site and 8 currently benefit from a Class N exemption.

CDP Policy 16 clearly uses the 100m criterion when considering proposals for the creation of new HMOs. It is noteworthy that a Planning Inspector, at a recent appeal in our parish (appeal ref: APP/X1355/W/20/3245601), fully supported the Council's use of the 100m criterion, considering: *"the 100-metre radius is a more suitable geographical denominator by which to measure the level of C4 properties than use of 'the street' since the latter would turn on the highly variable dimension of the length of the road and the number of dwellings along it, rendering it of limited use."* The Inspector considered the use of the 100m radius to be: *"a sensible way to implement a policy that recognises that a householder's day to day social interaction with others is often dependent upon distance and not just street address"*.

With this particular application, the proportion of Council Tax exempt properties is above 10% and below 90%. Therefore, whilst the local area, as defined by the 100m criterion, is already imbalanced by a high proportion of student properties, its concentration has not yet reached a level of imbalance that would result in the policy objective of protecting the balance from being unlikely to be achieved.

Nearby residents have already reported the detrimental impact on their local community caused by the anti-social behaviour of students housed within the city. These present proposals would result in a further imbalance in the community and have a detrimental impact on surrounding residential amenities through noise and disturbance, contrary to CDP Policies 29 and 31 as well as the NPPF (paragraph 130 (f)) which seeks to resist development that adversely affects residential amenity.

The proposed change of use of this existing C3 dwelling house is therefore unacceptable because 1 Diamond Terrace is located in an area already identified as exceeding the threshold set out in Policy 16.3 of the County Durham Plan.

In their justification, the applicant contends that the property itself has been in use historically as an HMO, most specifically prior to the introduction of the Article 4 Direction to the area in 2016, for well over 10 years and was let to postgraduate students until its purchase by the applicant in July 2020.

However, the Parish Council is aware that the tenants (a family) who previously resided in this property (as a C3 dwellinghouse) between 2010 and 2020 are able to provide testimony to this fact.

Furthermore, because the C4 Use Class came into use in April 2010 and because the previous family tenants were already in residence from February 2010, the Parish Council does not believe that the applicant has provided any evidence to prove that this property has ever been in use as a C4 dwelling.

To avoid this constraint the applicant attempts to use one exemption paragraph in Policy 16.3, which states that new changes of use from C3 to C4 would not be resisted *"where an existing high proportion of residential properties within the 100 metres are exempt from council tax charges (Class N), on the basis that commercial uses are predominant within the 100 metre*

area". The applicant contends that this application should be considered under this exemption (class i exemption), claiming that the application site is located in an area where commercial uses are predominant. Images 1 and 2 below illustrate the 100m radius boundary around the application site.

Image 1 – OS map of 1 Diamond Terrace



Image 2 - aerial photograph of the site from August 2019



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Firstly, the residential dwellings of Diamond Terrace lie immediately East of the site, with more residential properties on Sidegate to the South.

Secondly, the hatched green area in Image 1 above, which is the Green Belt, actually occupies a larger area than the offices (the total area within 100m of 1 Diamond Terrace is 31,412m² of which 4,400m² (14%) is Green Belt).

It is correct that the North East Probation Service (a public service not a commercial use) operates within the 100m radius of the application site and a planning application from the same applicant to demolish the nearby Mainstreet USA offices and replace this with a new build 2-4 storey workplace building and associated landscaping remains undetermined. However, there has been no commercial activity in the Mainstreet USA office for at least 18

months and the future for this is still uncertain given that a) the planning application remains undetermined; b) particularly in the wake of the Covid-19 pandemic and the general move towards businesses working from home, the building may not find commercial tenants if this is let at all and c) it could be used as an additional non-commercial body such as the Probation Service.

Milburngate is an irrelevant consideration as it is outside the 100m radius. The Radisson Blu hotel itself is also beyond the 100m radius, though about 30% of its car park falls just within it.

It is noteworthy that the applicant for another C4 application (Planning ref: DM/21/01670/FPA – 63 Crossgate) within our parish but similarly outside the defined town centre (as defined by Policy 9) also contended that the application site in that case was in an area where commercial uses are predominant and therefore that the exemption set out at Policy 16.3i) must apply.

In that case, the Spatial Planning team concluded: *“It is noted that the (application site) is not within the defined town centre (Policy 9) and whilst there are commercial uses there is also a presence of residential uses in this area.*

We note the information provided by the applicant, which states that of their assessment of 111 units within 100m of the property 30 are C3 dwelling houses, with a range of other uses including Class E, sui generis, tourist accommodation and student properties. However, Policy 16 requires the use of Class N (Student) exemption data to understand the concentration of student properties. In this case there are 57.4% class N exempt properties which equates to 80 Class N exempt properties and 34 other residential properties.

There is therefore a notable residential presence in this location, within the mix of uses, and as such, in the context of Policy 16, the proposal would not accord with the exception criteria set out in criteria 3(i) and could not be supported in policy terms”.

The Parish Council believes that this same policy test applies to the application for 1 Diamond Terrance and, given that there is a notable residential presence in this area, the Parish Council submits that this application site does not constitute an area where commercial uses are predominant and therefore cannot benefit from the class i exemption set out at Policy 16.3. This application clearly conflicts with Policy 16 and should therefore be refused.

Conclusion

The main planning considerations in determining this application have been set out in this letter, highlighting this application’s clear conflict with numerous key parts of both the CDP (Policies 16.3, 29 and 31) as well as the NPPF.

No material considerations lead the Parish Council to judge otherwise in accordance with the development plan.

This application should therefore be refused without delay. However, should officers be minded to approve this application, the Parish Council requests that it be called in to the Central and East Area County Planning Committee so that we may put our case to Members.

Yours sincerely,

Adam Shanley

Clerk to the City of Durham Parish Council